HOUSE DOCKET, NO. 1282 FILED ON: 1/20/2011

HOUSE . . . . . No. 1194

The Commonwealth of Massachusetts

PRESENTED BY:

Robert M. Koczera

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act relative to universal voluntary retirement accounts.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Robert M. Koczera	*11th Bristol*

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HOUSE . . . . . No. 1194

By Mr. Koczera of New Bedford, petition (accompanied by bill, House, No. 1194) of Robert M. Koczera relative to universal voluntary retirement accounts. Financial Services.

The Commonwealth of Massachusetts

An Act relative to universal voluntary retirement accounts.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The legislature finds that small and medium sized businesses find it difficult to offer retirement plans because of the complexity and costs. Businesses offering retirement plans have better ability to recruit and retain employees. The Massachusetts voluntary retirement accounts program will provide a simple and cost effective way for employers to offer an important employee benefit. The legislature also finds that many workers do not have access to an employment based retirement plan. Workers who are unable to build up pensions and savings risk living on low incomes in their old age and are more likely to become dependent on state services. The Massachusetts voluntary retirement accounts program will provide for a simple and inexpensive way for worker to save for retirement.

SECTION 2. The definitions in this section apply throughout, unless the context clearly requires otherwise.

(1) "Director" means the director of the voluntary retirement accounts program.

(2) "Enrollee" means any worker in the state that is enrolled in the program.

(3) "Participating employer" means any private employer, with a place of business in this state, and with employees that have enrolled in the program.

(4) "Program" means the Massachusetts voluntary retirement accounts program created by this act.

(5) "Qualified employee" means those workers that are defined by the federal internal revenue service to be eligible to participate in a specific retirement plan.

SECTION 3. The director is responsible for the implementation and operation of the program, directly or by contract. Sections 4 through 6 of this act may not be implemented until appropriate federal and/or philanthropic funds for start-up have been secured for deposit into the

23 Massachusetts voluntary retirement accounts program administrative account. Once start-up
24 funding has been expended, program implementation and operation is paid through fees on
25 enrollee's accounts. Funds from the Massachusetts public retirement systems expense account
26 may not be used to administer the program or to obtain program funding.

27 SECTION 4. Prior to the enrollment of any private sector worker or employer in the
28 program, the director shall design a plan for the operation of the program. The program consists
29 of a two tier system with one or more of the following: SIMPLE IRA-type program or other
30 internal revenue service approved employer plan, open to any employer employing one hundred
31 or fewer qualified employees who choose to participate for their employees; and workplace
32 based individual retirement accounts open to all workers. The director shall then seek approval
33 if necessary from the federal internal revenue service to offer the plans and accounts to
34 Massachusetts employers and workers on tax-qualified basis. The plans and accounts must
35 include the option for enrollees to roll pretax contributions into an individual retirement account
36 or another eligible retirement plan after ceasing participation in the program. A range of
37 investment options must be provided to meet the needs of investors with various levels of risk
38 tolerance and various ages. Funds offered should cover a range of investment options from low
39 risk to high risk and include options for those who do not wish to actively manage their
40 investments. The Pension Reserves Investment Management "PRIM" Board shall provide
41 investment options for participants to choose from, and shall establish an investment plan for
42 participants who choose not to self-direct investments.

43 SECTION 5. Enrollment in the program is not an entitlement and must not result in
44 expenditures that exceed the amount available in the Massachusetts voluntary retirement
45 accounts program administrative account. If it appears that continued enrollment will result in
46 expenditures exceeding the amount available for a particular fiscal year, the director may freeze
47 new enrollments in the program and establish a waiting list of eligible workers, or reduce
48 enrollments.

49 SECTION 6. Following the design and approval of the program under section 4 of this
50 act, the director shall adopt all rules necessary for the implementation and operation of the
51 program. Rules shall be written to comply with federal standards and may incorporate federal
52 recommendations that are in the best interests of enrollees and the operations of the plan. As part
53 of the rule development process, the director shall consult with employers, workers, private
54 sector retirement plan administrators and providers, and any other individuals or entities the
55 director determines relevant to the development of an effective and efficient method for
56 operating the program.

57 SECTION 7. (1) The Massachusetts voluntary retirement accounts program principal
58 account is established in the state treasury department and must be administered in compliance
59 with applicable federal law and as set forth in this section. The department may make
60 arrangements with financial institutions to serve as trustees or custodians of the Massachusetts

61 voluntary retirement accounts as may be required or advisable to comply with applicable federal
62 law and to provide for the efficient implementation and administration of the program.

63 (2) The contributions elected by participating employees in accordance with section 4 of
64 this act must be paid into the Massachusetts voluntary retirement accounts program principal
65 account and must be sufficient to cover costs of administration and staffing in addition to such
66 other amounts as may be determined by the director.

67 (3) All moneys in the Massachusetts voluntary retirement accounts program
68 principal account and administrative account, all property and rights purchased therewith, and all
69 income attributable is held in trust by the Pension Reserves Investment Management

70 Board for the exclusive benefit of the Massachusetts voluntary retirement accounts
71 program participants and their beneficiaries, and, notwithstanding any other provision of this or
72 related acts, must be held separate from other types of funds to the extent required by federal
73 law. Neither the participating employee, nor the participant's beneficiary or beneficiaries, nor
74 any other designee, has any right to receive any payments under the program. These payments
75 and rights are non-assignable and non-transferable. Account balances are not subject to
76 attachment, garnishment, or execution and are not transferable by operation of law in event of
77 bankruptcy or insolvency, except to the extent otherwise required by law.

78 (4) The Pension Reserves Investment Management Board has the full power to invest
79 moneys in the Massachusetts voluntary retirement accounts program principal account and the
80 administrative account. All investment and operating costs of the Pension Reserves Investment
81 Management Board associated with the investment of the program assets must be paid by the
82 Massachusetts voluntary retirement accounts program. With the exception of these expenses,
83 one hundred percent of all earnings from these investments shall accrue directly to the
84 Massachusetts voluntary retirement accounts program principal account,

85 (5) (a) No state board, commission, or agency, or any officer, employee, or member
86 thereof is liable for any loss or deficiency resulting from participant investments selected under
87 this subchapter.

88 (b) The Pension Reserves Investment Management Board or any officer, employee,
89 or member thereof is not liable for any loss of deficiency resulting from reasonable efforts to
90 implement investment directions under this subchapter.

91 (6) The Massachusetts voluntary retirement accounts program administrative account is
92 created in the state treasury. Federal appropriations or philanthropic grants received specifically
93 for this program must be deposited into the Massachusetts voluntary retirement accounts
94 program administrative account. Expenses of the department pertaining to the Massachusetts
95 voluntary retirement accounts program including staffing and administrative expenses shall be
96 paid out of the Massachusetts voluntary retirement accounts program administrative account.

97 Any excess balances credited to this account over administrative expenses disbursed from this
98 account shall be transferred to the Massachusetts voluntary retirement accounts program
99 principal account at such time and in such amounts as may be determined by the director with
100 the approval of the director of financial management. Any deficiency into the Massachusetts
101 voluntary retirement accounts program administrative account caused by an excess of
102 administrative expenses disbursed from this account shall be transferred to this account from the
103 Massachusetts voluntary retirement accounts program principal account.

104 (7) (a) (i) The director shall keep or cause to be kept full and adequate accounts and
105 records of the assets of each individual participant, obligations, transactions, and affairs of the
106 program. The department shall account for and report on the investment of program assets or
107 may enter into an agreement with Pension Reserves Investment Management Board for
108 accounting and reporting.

109 (ii) The director's duties related to individual participant accounts include conducting
110 the activities, and direction of cash movement and related wire transfers with the custodian bank
111 and outside investment firms.

112 (iii) The director has sole responsibility for contracting with any record keepers for
113 individual participant accounts and shall manage the performance of record keepers under those
114 contracts. In establishing contracts, the director shall give consideration to contracts that assign
115 primary liability for all tort and contract actions to the contractor. In establishing the contracts,
116 the department shall assume secondary liability and joint and several liability must be preserved.
117 When considering a contract that assigns primary liability to the contractor, the director shall
118 determine the potential liability and the costs and benefits of adding the liability considerations
119 in this subsection (7) (a) (iii) to contract language.

120 (b) The director may contract with private-sector financial services firms to enroll
121 eligible private-sector individuals and workers in the Massachusetts voluntary retirement
122 accounts program. The director may establish contracts with financial services firms for this
123 function.

124 (c) (i) The director's duties under (a) (ii) of this subsection do not limit the authority of
125 the Pension Reserves Investment Management Board to conduct its responsibilities for asset
126 management and balancing of program funds.

127 (ii) The Pension Reserves Investment Management Board has sole responsibility for
128 contracting with outside investment firms to provide investment management for program funds
129 and shall manage the performance of investment managers under those contracts. In establishing
130 contracts, the Pension Reserves Investment Management Board shall give consideration to
131 contracts that assign primary liability for all tort and contract actions to the contractor. In
132 establishing the contracts, the Pension Reserves Investment Management Board shall assume
133 secondary liability and joint and several liability must be preserved. When considering a

134 contract that assigns primary liability to the contractor, the Pension Reserves Investment
135 Management Board shall determine the potential liability and the costs and benefits of adding the
136 liability considerations in this subsection (7) (c) (ii) to contract language.

137 (d) The state treasurer shall designate and define the terms of engagement for the
138 custodial banks.

139 SECTION 8. Private employers shall provide employees with the opportunity to enroll in
140 the program, including providing for payroll deductions for those employees that enroll in the
141 program. Employers with employees enrolled in the program are authorized to contract with the
142 enrolled employees to defer or contribute a portion of the enrolled employees' compensation, in
143 accordance with the program rules.

144 SECTION 9. The director shall report biennially to the relevant committees of the
145 legislature on the effectiveness and efficiency of the program, including the levels of enrollment,
146 the financial status of the program, and the retirement savings levels of participating enrollees.

147 SECTION 10. If any part of this act is found to be in conflict with federal requirements
148 that are a prescribed condition to the allocation of federal funds to the state, the conflicting part
149 of this act is inoperative solely to the extent of the conflict and with respect to the agencies
150 directly affected, and this finding does not affect the operation of the remainder of this act in its
151 application to the agencies concerned. Rules adopted under this act must meet federal
152 requirements that are a necessary condition to the receipt of federal funds by the state.